

SENATE, No. 2870

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 12, 2011

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

Senator DONALD NORCROSS

District 5 (Camden and Gloucester)

Co-Sponsored by:

Senators A.R.Bucco and Cardinale

SYNOPSIS

Increases production limitations and revises privileges of limited and restricted breweries.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/20/2011)

1 AN ACT concerning certain brewery licenses and amending
2 R.S.33:1-10, P.L.1962 c.152, and R.S.33:1-43.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. R.S.33:1-10 is amended to read as follows:

8 33:1-10. Class A licenses shall be subdivided and classified as
9 follows:

10 Plenary brewery license. 1a. The holder of this license shall be
11 entitled, subject to rules and regulations, to brew any malt alcoholic
12 beverages and to sell and distribute his products to wholesalers and
13 retailers licensed in accordance with this chapter, and to sell and
14 distribute without this State to any persons pursuant to the laws of
15 the places of such sale and distribution, and to maintain a
16 warehouse. The fee for this license shall be \$10,625.

17 Limited brewery license. 1b. The holder of this license shall be
18 entitled, subject to rules and regulations, to brew any malt alcoholic
19 beverages in a quantity to be expressed in said license, dependent
20 upon the following fees and not in excess of ~~300,000~~ 500,000
21 barrels of 31 fluid gallons capacity per year and to sell and
22 distribute this product to wholesalers and retailers licensed in
23 accordance with this chapter, and to sell and distribute without this
24 State to any persons pursuant to the laws of the places of such sale
25 and distribution, ~~and~~ to maintain a warehouse, and to sell his
26 products at retail to consumers on the licensed premises of the
27 brewery for consumption on or off the premises, and to offer
28 samples for sampling purposes only. The fee for this license shall
29 be graduated as follows:

30 to so brew not more than 50,000 barrels of 31 liquid gallons
31 capacity per annum, \$1,250;

32 to so brew not more than 100,000 barrels of 31 fluid gallons
33 capacity per annum, \$2,500;

34 to so brew not more than ~~200,000~~ 300,000 barrels of 31 fluid
35 gallons capacity per annum, \$5,000;

36 to so brew not more than ~~300,000~~ 500,000 barrels of 31 fluid
37 gallons capacity per annum, \$7,500. The holder of this license shall
38 also have the right to sell such malt alcoholic beverages at retail in
39 original packages in 10 salesrooms apart from the brewery premises
40 for consumption on or off the premises and for sampling purposes
41 for consumption on the premises, at a fee of \$250 for each
42 salesroom.

43 Upon submission of the required fees and proof satisfactory to
44 the director, a brewery duly licensed in another state, with annual
45 production not in excess of 500,000 barrels of 31 fluid gallons

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 capacity per annum, may apply for a limited brewery license under
2 this subsection. The holder of the limited brewery license granted
3 pursuant to this subsection shall have the right to sell the brewery's
4 products to consumers at retail in original packages in 10
5 salesrooms situated in the State of New Jersey for consumption on
6 or off the premises and for sampling purposes for consumption on
7 the premises, at a fee of \$250 for each salesroom.

8 For the purposes of this section, "sampling" means the selling at
9 a nominal charge or the gratuitous offering of an open container not
10 exceeding four ounces of any malt alcoholic beverage. For the
11 purposes of this section, "product" means any malt alcoholic
12 beverage that is produced by the licensee on its licensed premises
13 situated in the State of New Jersey.

14 Restricted brewery license. 1c. The holder of this license shall
15 be entitled, subject to rules and regulations, to brew any malt
16 alcoholic beverages in a quantity to be expressed in such license not
17 in excess of [3,000] 10,000 barrels of 31 gallons capacity per year.
18 Notwithstanding the provisions of R.S.33:1-26, the director shall
19 issue a restricted brewery license only to a person or an entity
20 which has identical ownership to an entity which holds a plenary
21 retail consumption license issued pursuant to R.S.33:1-12, provided
22 that such plenary retail consumption license is operated in
23 conjunction with a restaurant regularly and principally used for the
24 purpose of providing meals to its customers and having adequate
25 kitchen and dining room facilities, and that the licensed restaurant
26 premises is immediately adjoining the premises licensed as a
27 restricted brewery. The holder of this license shall only be entitled
28 to sell or deliver the product to that restaurant premises, or to
29 another restaurant premises operated by the same entity which also
30 holds a plenary retail consumption license issued pursuant to
31 R.S.33:1-12 for that licensed premises, but which does not hold a
32 restricted brewery license issued pursuant to this section adjacent to
33 that licensed restaurant premises. The fee for this license shall be
34 \$1,250, which fee shall entitle the holder to brew up to 1,000
35 barrels of 31 liquid gallons per annum. The licensee also shall pay
36 an additional [\$625] \$250 for every additional 1,000 barrels of 31
37 fluid gallons produced. [No more than two restricted brewery
38 licenses shall be issued to a person or entity which holds an interest
39 in a plenary retail consumption license.] The fee shall be estimated
40 and paid at the time of application for the license, and shall be
41 adjusted within 60 days following the expiration of the license term
42 upon certification by the licensee of the actual gallons brewed
43 during the license term. If the governing body of the municipality
44 in which the licensed premises will be located should file a written
45 objection, the director shall hold a hearing and may issue the license
46 only if the director finds that the issuance of the license will not be
47 contrary to the public interest. All fees related to the issuance of
48 both licenses shall be paid in accordance with statutory law. The

1 holder of this license shall also have the privilege to offer samples
2 of its product off the licensed premises pursuant to an annual permit
3 issued by the director. The holder of this license also may hold a
4 limited brewery license for the same premises licensed under this
5 restricted brewery license.

6 Plenary winery license. 2a. Provided that the holder is engaged
7 in growing and cultivating grapes or fruit used in the production of
8 wine on at least three acres on, or adjacent to, the winery premises,
9 the holder of this license shall be entitled, subject to rules and
10 regulations, to produce any fermented wines, and to blend, fortify
11 and treat wines, and to sell and distribute his products to
12 wholesalers and retailers license in accordance with this chapter and
13 to churches for religious purposes, and to sell and distribute with
14 this State to any persons pursuant to the laws of the places of such
15 sale and distribution, and to maintain a warehouse, and to sell his
16 products at retail to consumers on the licensed premises of the
17 winery for consumption on or off the premises and to offer samples
18 for sampling purposes only. The fee for this license shall be \$938.
19 The holder of this license shall also have the right to sell such wine
20 at retail in original packages in six salesrooms apart from the
21 winery premises for consumption on or off the premises and for
22 sampling purposes for consumption on the premises, at a fee of
23 \$250 for each saleroom. Additionally, subject to rules and
24 regulations, one salesroom per county may be jointly controlled and
25 operated by at least two plenary or farm winery licensees for the
26 sale of the products of any plenary or farm winery licensee for
27 consumption on or off the premises and for consumption on the
28 licensed premises for sampling purposes at an additional fee of
29 \$625 per county salesroom. For the purposes of this subsection,
30 "sampling" means the selling at a nominal charge or the gratuitous
31 offering of an open container not exceeding one and one-half
32 ounces of any wine. For the purposes of this section, "product"
33 means any wine that is produced, blended, fortified, or treated by
34 the licensee on its licensed premises situated in the State of New
35 Jersey. Any holder of a plenary winery license who sold wine
36 which was produced, bottled, and labeled by that holder in a place
37 other than its licensed New Jersey premises between July 1, 1992
38 and June 30, 1993, may continue to sell that wine provided no more
39 than 25,000 cases, each case consisting of 12 750 milliliter bottles
40 or the equivalent, are sold in any single license year. This privilege
41 shall terminate upon, and not survive, any transfer of the license to
42 another person or entity subsequent to the effective date of this
43 1993 amendatory act or any transfer of stock of the licensed
44 corporation other than to children, grandchildren, parents, spouses
45 or siblings of the existing stockholders.

46 Farm winery license. 2b. The holder of this license shall be
47 entitled, subject to rules and regulations, to manufacture any
48 fermented wines and fruit juices in a quantity to be expressed in

1 said license, dependent upon the following fees and not in excess of
2 50,000 gallons per year and to sell and distribute his products to
3 wholesalers and retailers licensed in accordance with this chapter
4 and to churches for religious purposes and to sell and distribute
5 without this State to any persons pursuant to the laws of the places
6 of such sale and distribution, and to maintain a warehouse and to
7 sell at retail to consumers for consumption on or off the licensed
8 premises and to offer samples for sampling purposes only. The
9 license shall be issued only when the winery at which such
10 fermented wines and fruit juices are manufactured is located and
11 constructed upon a tract of land exclusively under the control of the
12 licensee, provided that the license is actively engaged in growing
13 and cultivating an area of not less than three acres on or adjacent to
14 the winery premises and on which are growing grape vines or fruit
15 to be processed into wine or fruit juice; and provided, further, that
16 for the first five years of the operation of the winery such fermented
17 wines and fruit juices shall be manufactured from at least 51%
18 grapes or fruit grown in the State and that thereafter they shall be
19 manufactured from grapes or fruit grown in this State at least to the
20 extent required for labeling as "New Jersey Wine" under the
21 applicable federal laws and regulations. The containers of all wine
22 sold to consumers by such licensee shall have affixed a label stating
23 such information as shall be required by the rules and regulations of
24 the Director of the Division of Alcoholic Beverage Control. The
25 fee for this license shall be graduated as follows:

26 To so manufacture between 30,000 and 50,000 gallons per
27 annum, \$375; to so manufacture between 2,500 and 30,000 gallons
28 per annum, \$250; to so manufacture between 1,000 and 2,500
29 gallons per annum, \$125; to so manufacture less than 1,000 gallons
30 per annum, \$63. No farm winery shall be held by the holder of a
31 plenary winery license or be situated on a premises licensed as a
32 plenary winery. The holder of this license shall also have the right
33 to sell his products in original packages at retail to consumers in six
34 salesrooms apart from the winery premises for consumption on or
35 off the premises, and for sampling purposes for consumption on the
36 premises, at a fee of \$250 for each salesroom. Additionally, subject
37 to rules and regulations, one salesroom per county may be jointly
38 controlled and operated by at least two plenary or farm winery
39 licensees for the sale of the products of any plenary or farm winery
40 licensee for consumption on or off the premises and for
41 consumption on the licensed premises for sampling purposes only,
42 at an additional fee of \$625 per county salesroom. For the purposes
43 of this subsection, "sampling" means the selling at a nominal charge
44 or the gratuitous offering of an open container not exceeding one
45 and one-half of any wine. Unless otherwise indicated, for the
46 purposes of this subsection, with respect to farm winery licenses,
47 "manufacture" means the vinification, aging, storage, blending,

1 clarification, stabilization and bottling of wine or juice from New
2 Jersey fruit to the extent required by this subsection.

3 Wine blending license. 2c. The holder of this license shall be
4 entitled, subject to rules and regulations, to blend, treat, mix, and
5 bottle fermented wines and fruit juices with non-alcoholic
6 beverages, and to sell and distribute his products to wholesalers and
7 retailers licensed in accordance with this chapter, and to sell and
8 distribute without this State to any persons pursuant to the laws of
9 the places of such sale and distribution, and to maintain a
10 warehouse. The fee for this license shall be \$625.

11 Instructional winemaking facility license. 2d. The holder of this
12 license shall be entitled, subject to rules and regulations, to instruct
13 persons in and provide them with the opportunity to participate
14 directly in the process of winemaking and to directly assist such
15 persons in the process of winemaking while in the process of
16 instruction on the premises of the facility. The holder of this
17 license also shall be entitled to manufacture wine on the premises
18 not in excess of an amount of 10% of the wine produced annually
19 on the premises of the facility, which shall be used only to replace
20 quantities lost or discarded during the winemaking process, to
21 maintain a warehouse, and to offer samples produced to persons
22 who have received instruction in winemaking on the premises by
23 the licensee for sampling purposes only on the licensed premises for
24 the purpose of promoting winemaking for personal or household use
25 or consumption. Wine produced on the premises of an instructional
26 winemaking facility shall be used, consumed or disposed of on the
27 facility's premises or distributed from the facility's premises to a
28 person who has participated directly in the process of winemaking
29 for the person's personal or household use or consumption. The
30 holder of this license may sell mercantile items traditionally
31 associated with winemaking and novelty wearing apparel identified
32 with the name of the establishment licensed under the provisions of
33 this section. The holder of this license may use the licensed
34 premises for an event or affair, including an event or affair at which
35 a plenary retail consumption licensee serves alcoholic beverages in
36 compliance with all applicable statutes and regulations promulgated
37 by the director. The fee for this license shall be \$1,000. For the
38 purposes of this subsection, "sampling" means the gratuitous
39 offering of an open container not exceeding one and one-half
40 ounces of any wine.

41 Plenary distiller license. 3a. The holder of this license shall be
42 entitled, subject to rules and regulation, to manufacture any distilled
43 alcoholic beverages and rectify, blend, treat and mix, and to sell and
44 distribute his products to wholesalers and retailers licensed in
45 accordance with this chapter, and to sell and distribute without this
46 State to any persons pursuant to the laws of the places of such sale
47 and distribution, and to maintain a warehouse. The fee for this shall
48 be \$12,500.

1 Limited distillery license. 3b. The holder of this license shall be
2 entitled, subject to rules and regulations, to manufacture and bottle
3 any alcoholic beverages distilled from fruit juices and rectify,
4 blend, treat, mix, compound with wine and add necessary
5 sweetening and flavor to make cordial or liqueur, and to sell and
6 distribute to wholesalers and retailers licensed in accordance with
7 this chapter, and to sell and distribute without this State to any
8 persons pursuant to the laws of the places of such sale and
9 distribution and to warehouse these products. The fee for this
10 license shall be \$3,750.

11 Supplementary limited distillery license. 3c. The holder of this
12 license shall be entitled, subject to rules and regulations, to bottle
13 and rebottle, in a quantity to be expressed in said license, dependent
14 upon the following fess, alcoholic beverages distilled from fruit
15 juices by such holder pursuant to a priority plenary or limited
16 distillery license, and to sell and distribute his products to
17 wholesalers and retailers licensed in accordance with this chapter ,
18 and to sell and distribute without this State to any persons pursuant
19 to the laws of the places of such sale and distribution, and to
20 maintain a warehouse. The fee for this license shall be graduated as
21 follows:

22 to so bottle and rebottle not more than 5,000 wine gallons per
23 annum, \$313;

24 to so bottle and rebottle not more than 10,000 wine gallons per
25 annum, \$625;

26 to so bottle and rebottle without limit as to amount, \$1,250.

27 Rectifier and blender license. 4. The holder of this license shall
28 be entitled, subject to rules and regulations, to rectify, blend, treat
29 and mix distilled alcoholic beverages, and to fortify, blend, and
30 treat fermented alcoholic beverages, and to prepare mixtures of
31 alcoholic beverages, and to sell and distribute his products to
32 wholesalers and retailers licensed in accordance with this chapter,
33 and to sell and distribute without this State to any persons pursuant
34 to the laws of the places of such sale and distribution, and to
35 maintain a warehouse. The fee for this license shall be \$7,500.

36 Bonded warehouse bottling license. 5. The holder of this license
37 shall be entitled, subject to rules and regulations, to bottle alcoholic
38 beverages in bond on behalf of all persons authorized by federal and
39 State law and regulations to withdraw alcoholic beverages from
40 bond. The fee for this license shall be \$625. This license shall be
41 issued only to persons holding permits to operate Internal Revenue
42 bonded warehouses pursuant to the laws of the United States. The
43 provisions of section 21 of P.L.2003, c.117 amendatory of this
44 section shall apply to licenses issued or transferred on or after July
45 1, 2003, and to license renewals commencing on or after July 1,
46 2003.

47 (cf: P.L.2007, c. 329, s.1)

1 2. Section 2 of P.L.1962, c.152 (C.33:1-12.32) is amended to
2 read as follow:

3 2. The provisions of this act shall not apply to the acquisition
4 of an additional license or licenses or an interest therein, when such
5 license is issued to a person for use in connection with the operation
6 of a hotel containing at least 50 sleeping rooms, for use in
7 connection with the operation of a restaurant, for use in connection
8 with the operation of a bowling establishment consisting of more
9 than 20 lanes, but only so long as the person uses the license in
10 connection with the operation of that bowling establishment, for use
11 in a restaurant having ownership which is identical to the ownership
12 of a restricted brewery license issued pursuant to R.S.33:1-10, or
13 for use on premises within the grounds of an international airport,
14 nor shall the provisions of this act affect the right of any person to
15 dispose of an interest in a license or licenses by will or to the
16 transfer of such an interest by descent and distribution.

17 Any additional license acquired for use in connection with a
18 restaurant or bowling establishment consisting of more than 20
19 lanes or for use on premises within the grounds of an international
20 airport, as herein authorized, shall be limited, however, to the sale
21 of alcoholic beverages for consumption on the licensed premises
22 only, except that this restriction shall not apply to the sale of malt
23 alcoholic beverages produced on the licensed premises of a
24 restricted brewery pursuant to R.S.33:1-10.

25 (cf: P.L.1985, c.65, s.1)

26

27 3. R.S.33:1-43 is amended to read as follows:

28 33:1-43. a. It shall be unlawful for any owner, part owner,
29 stockholder or officer or director of any corporation, or any other
30 person whatsoever interested in any way whatsoever in any
31 brewery, winery, distillery or rectifying and blending plant, or any
32 wholesaler of alcoholic beverages, to conduct, own either in whole
33 or in part, or be directly or indirectly interested in the retailing of
34 any alcoholic beverages in New Jersey except as provided in this
35 chapter, and such interest shall include any payments or delivery of
36 money or property by way of loan or otherwise accompanied by an
37 agreement to sell the product of said brewery, winery, distillery,
38 rectifying and blending plant or wholesaler.

39 b. It shall be unlawful for any owner, part owner, stockholder
40 or officer or director of any corporation, or any other person
41 whatsoever, interested in any way whatsoever in the retailing of
42 alcoholic beverages to conduct, own either whole or in part, or to be
43 a shareholder, officer or director of a corporation or association,
44 directly or indirectly, interested in any brewery, winery, distillery,
45 rectifying and blending plant, or wholesaling or importing interest
46 of any kind whatsoever.

47 No interest in the retailing of alcoholic beverages shall be
48 deemed to exist by reason of the ownership, delivery or loan of

1 interior signs designed for and exclusively used for advertising the
2 product of or product offered for sale by such brewery, winery,
3 distillery or rectifying and blending plant or wholesaler.

4 c. Nothing in this section shall prohibit:

5 (1) The exercise of limited retail privileges by Class A or Class
6 B licensees conferred pursuant to R.S.33:1-10, R.S.33:1-11, by rule
7 or regulation or by special permit issued by the director;

8 (2) Any owner, part owner, stockholder, officer or director of
9 any corporation, or any other person whatsoever interested in any
10 way whatsoever in any brewery, winery, distillery, rectifying and
11 blending plant or any wholesaler of alcoholic beverages, from
12 conducting, owning, either in whole or in part, or being directly or
13 indirectly interested in the retailing of any alcoholic beverages,
14 under any retail consumption license or State issued permit, in
15 conjunction with and as a part of the operations of a hotel or motel;

16 (3) Any owner, part owner, stockholder or officer or director of
17 any corporation, or any other person or corporation interested in
18 any way whatsoever in the retailing of alcoholic beverages, under a
19 retail consumption license or State issued permit, in conjunction
20 with and as a part of the operations of a hotel or motel from
21 conducting, owning, either in whole or in part, or being a
22 shareholder, officer or director of a corporation or association,
23 directly or indirectly interested in any brewery, winery, distillery,
24 rectifying and blending plant, or wholesaling or importing interest
25 of any kind whatsoever; or

26 (4) The exercise of a limited brewery or restricted brewery
27 license privilege by an immediately adjoining or other restaurant
28 having a plenary retail consumption license issued under R.S.33:1-
29 12, and having ownership which is identical to the ownership of the
30 limited brewery license and restricted brewery license.

31 No more than 20% of the total gross annual revenues of a hotel
32 or motel described in paragraphs (2) and (3) shall be derived from
33 the sale of alcoholic beverages by the hotel or motel. A retail
34 licensee described in paragraphs (2) and (3) shall not purchase or
35 sell any alcoholic beverage product produced or sold by the
36 brewery, winery, distillery, rectifying and blending plant,
37 wholesaler or importer that has any interest in the retail license of
38 the hotel or motel, unless the total of all such products is 5% or less
39 of the total volume of alcoholic beverage products purchased and
40 sold annually by the hotel or motel holding the retail license. The
41 retail licensee shall, within 30 days following the effective date of
42 this act, file with the Division of Alcoholic Beverage Control a list
43 of all alcoholic beverage products which shall not be purchased or
44 sold by the hotel or motel except to the extent permitted herein.
45 Thereafter, the retail licensee shall file a new or amended list with
46 the division within 30 days of any changed circumstances which
47 affect the information on the list. This list shall be made available
48 to the public upon request.

1 For purposes of this subsection "hotel" or "motel" means an
2 establishment containing at least 100 guest room accommodations
3 where the relationship between the occupants thereof and the owner
4 or operator of the establishment is that of innkeeper and guest.
5 (cf: P.L.1993, c.216, s.3)

6
7 4. This act shall take effect immediately.
8
9

10 STATEMENT

11
12 This bill revises current law concerning limited breweries and
13 restricted breweries, which are popularly known as brewpubs.

14 The bill permits limited breweries to increase their annual
15 production from 300,000 to 500,000 barrels annually. The bill also
16 permits these breweries to sell their products at retail to consumers
17 on the licensed premises of the brewery for consumption on or off
18 the premises, and to offer samples. The bill revises the fee for
19 licensees who produce certain quantities: the fee to produce up to
20 300,000 barrels annually would be \$5,000 and to brew up to
21 500,000 barrels annually would be \$7,500. The bill also permits the
22 licensee to sell malt alcoholic beverages at retail in original
23 packages in 10 salesrooms for consumption on or off the premises,
24 and to offer samples, at a fee of \$250 for each salesroom.

25 Upon submission of the required fees and proof satisfactory to
26 the director, a brewery duly licensed in another state which does not
27 produce more than 500,000 barrels annually may apply for a limited
28 brewery license under the bill. The holder of the limited brewery
29 license would have the right to sell the brewery's products to
30 consumers at retail in original packages in 10 salesrooms situated in
31 New Jersey for consumption on or off the premises and to offer
32 samples, at a fee of \$250 for each salesroom.

33 The bill also increases the quantity of malt alcoholic beverages
34 that may be produced by a restricted brewery from 3,000 to 10,000
35 barrels annually. Under current law, a restricted brewery must be
36 operated in conjunction with a restaurant which is immediately
37 adjoining the restricted brewery premises, and the brewery product
38 only may be delivered to that restaurant premises. This bill permits
39 licensees to serve their products at another restaurant they own
40 which is not a restricted brewery. The bill decreases the fee the
41 licensee is required to pay from \$625 to \$250 for every additional
42 1,000 barrels produced. In addition, the licensee may offer samples
43 of its products off the licensed premises if the licensee obtains an
44 annual permit issued by the director. The bill also permits a
45 restricted brewery licensee to obtain a limited brewery license for
46 the same premises licensed as a restricted brewery.

47 Current law prohibits the acquisition of more than two alcoholic
48 beverage retail licenses, with certain exceptions including

1 restaurants. This bill amends that statute to provide an exception
2 for the acquisition of an additional license to be used in a restaurant
3 with ownership identical to the ownership of a restricted brewery
4 license. If an additional license is acquired under current law for
5 use in a restaurant, the licensee may sell alcoholic beverages for
6 consumption only on the licensed premises. Under this bill,
7 however, the restaurant would be permitted to sell malt alcoholic
8 beverages produced by a restricted brewery for consumption off the
9 licensed premises.

10 Finally, the bill clarifies that the operation of a limited brewery
11 in conjunction with a restricted brewery and restaurants would not
12 conflict with the "tied house" prohibition established under
13 R.S.33:1-43, which prohibits a person with an interest in a brewery
14 from conducting or being directly or indirectly interested in the
15 retailing of any alcoholic beverages.